

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY MARYLAND

JEFFREY J. CONNAUGHTON, c/o 4725
Wisconsin Ave. NW, Suite 200, Washington DC
20016,

Case No. 461968V

JEFFREY D. KATZ, c/o 4725 Wisconsin Ave.
NW, Suite 200, Washington DC 20016, and

SCOTT D. OSER, , c/o 4725 Wisconsin Ave.
NW, Suite 200, Washington DC 20016,

COMPLAINT

on their own behalf and on behalf of all others
similarly situated,

Plaintiffs,

v.

DEMAND FOR JURY TRIAL

GARY W. DAY, 5000 Birch Street, Suite 3000
Newport Beach, CA 92660

CLASS ACTION

JOHN JEFFREY "JEFF" MAY, 4040 40th St.
N., Arlington, VA 22207-4667

ACREBAY CAPITAL MANAGEMENT, LLC,
4833 Bethesda Avenue, Suite 300, Bethesda,
Maryland 20814, in Montgomery County, and

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FILED
CREDIT PORTFOLIO LENDING II, LLC, 4833
Bethesda Avenue, Suite 300, Bethesda,
Maryland 20814, in Montgomery County,

Defendants.

SUMMARY OF THE ACTION

1. This is a securities fraud class action brought by Plaintiffs, on their own behalf and on behalf of a class of similarly situated investors, arising from a \$345 million Ponzi scheme. Claims are brought against the principals of a "feeder fund" who procured investors for the scheme while negligently failing to conduct adequate due diligence, and also making affirmative misrepresentations that they were active fund managers with investment and technical expertise, and concealing from investors the fact that they were merely passive conduits for investments in an opaque venture managed by others.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action, which is a civil action in which the damages exceed \$30,000.

3. This Court has personal jurisdiction over: (1) Acrebay and CPL2 (all defined below), which maintained their principal places of business in Montgomery County, Maryland at all pertinent times, (2) Day, who transacted business systematically in Maryland and had a residence in Maryland at all times pertinent to, and (3) May, who transacts business systematically in Maryland and owns a residence in Maryland.

4. Venue is proper because Plaintiffs Katz and Oser reside in Montgomery County, Defendants Acrebay and CPL2 have their principal places of business in Montgomery County, and a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in Montgomery County.

THE PARTIES AND OTHER RELEVANT PERSONS

Plaintiffs

5. Plaintiff Jeffrey J. Connaughton is a resident of Alabama. Plaintiff Connaughton purchased securities sold by defendants in reliance on false and misleading information provided by defendants and has thus been damaged as a result of defendants' conduct.

6. Plaintiff Jeffrey D. Katz is a resident of Montgomery County, Maryland. Plaintiff Katz purchased securities sold by defendants in reliance on false and misleading information provided by defendants and has thus been damaged as a result of defendants' conduct.

7. Plaintiff Scott D. Oser is a resident of Montgomery County, Maryland. Plaintiff Oser purchased securities sold by defendants in reliance on false and misleading information provided by defendants and has thus been damaged as a result of defendants' conduct.

Individual Defendants

8. Defendant Gary W. Day ("Day") is a resident of California, who resided and had his principal place of business in Montgomery County, Maryland at all times relevant hereto.

9. Defendant John Jeffrey “Jeff” May (“May”) is a resident of Virginia. May transacts business generally in Maryland and owns a residence in Edgewater, Maryland. This action also arises out of transactions conduct by May, all or in substantial part, in Maryland.

The Day/May Entities

10. Defendant Acrebay Capital Management, LLC (“Acrebay”) is a Delaware limited liability company with its last known principal place of business in Bethesda, Maryland. Acrebay is, and has at all relevant times been, controlled by Day and May. Defendant Day has recently (as of October 25, 2018) represented to investors that Acrebay has relocated to Newport Beach, California, although, as of January 4, 2019, Acrebay had not yet registered to do business in California with the California Secretary of State. Acrebay had its principal place of business in Bethesda at all times relevant hereto. As of January 4, 2019, Acrebay’s website (<http://www.acrebay.com>) identifies its address as “4833 Bethesda Avenue, Suite 300, Bethesda, Maryland 20814.”

11. Defendant Credit Portfolio Lending, II (“CPL2”) is a Delaware limited liability company with its last known principal place of business in Bethesda, Maryland. CPL2 had its principal place of business in Maryland at all times relevant hereto. CPL2 is, and has at all relevant times been, controlled by Day and May.

12. Day, May, CPL2 and Acrebay are at times referred to as the “Defendants.”

Nonparties Merrill, Ledford, Jezierski and the MLJ Entities

13. Kevin B. Merrill is a resident of Towson, Maryland.

14. Jay B. Ledford is a resident of Texas.

15. Cameron R. Jezierski is a resident of Texas.

16. Global Credit Recovery, LLC (“GCR”) is a Maryland limited liability company with its principal place of business in Towson, Maryland. GCR is the entity through which Merrill primarily operates, and GCR sold purported investments in consumer debt portfolios. Merrill owns, controls, and is the managing member of GCR

17. Delmarva Capital, LLC (“Delmarva”) is a Delaware limited liability company with its principal place of business in Towson, Maryland. Merrill owns, controls, and is the CEO/managing member of Delmarva, and Delmarva sold purported investments in consumer debt portfolios.

18. Rhino Capital Holdings, LLC (“Rhino Capital”) is a Montana limited liability company with its principal place of business in Towson, Maryland. Rhino Capital is owned and controlled by Merrill, and Rhino Capital received money from investors in connection with purported investments in consumer debt portfolios.

19. Rhino Capital Group, LLC (“Rhino Group”) is a Delaware limited liability company with its principal place of business in Towson, Maryland. Merrill owns and controls Rhino Group, and Rhino Group sold purported investments in consumer debt portfolios. In his communications with investors, Merrill portrayed Rhino Group and Rhino Capital (collectively, “Rhino”) as a single entity and treated the two interchangeably.

20. DeVille Asset Management LTD (“DeVille”) is a Texas limited partnership. DeVille's principal place of business is in Colleyville, Texas. JBL Holdings, an entity owned and/or controlled by Ledford, is DeVille's general partner. DeVille is controlled by Ledford, who holds himself out as DeVille's CEO, and DeVille sold purported investments in consumer debt portfolios.

21. Riverwalk Financial Corporation (“RW Financial”) is a Delaware corporation with its principal place of business in Colleyville, Texas. RW Financial is the entity through which Ledford primarily operated. RW Financial received money from investors and is controlled by Ledford, who is the CEO.

22. Platinum Capital Investments, Ltd. (“Platinum”) is a Texas limited partnership with its principal place of business in Colleyville, Texas. Platinum was, upon information and belief, controlled at all times by Ledford and Merrill. GCR, Platinum and Delmarva are at times referred to as the “MLJ Borrowers.”

23. GCR, Delmarva, Rhino Capital, Rhino Group, DeVille, Platinum, RW Financial, and all affiliated business entities under the control of Merrill, Ledford and/or Jeziarski, are collectively referred to as the "MLJ Entities." Merrill, Ledford, Jeziarski and the MLJ Entities are at times referred to as the "MLJ Group."

DEFENDANTS' COURSE OF NEGLIGENT AND FRAUDULENT CONDUCT

24. Merrill and Ledford have, at least since 2009, been in the business of purchasing distressed consumer debt. Consumer debt of the type relevant to this matter—generally auto debt, credit card debt, and student loan debt—is often sold in portfolios comprised of groups of thousands of individual debtors' accounts. The portfolios are typically denominated by the principal, or face, value amount—the amount of outstanding debt collectively owed by the individual debtors comprising the portfolio. Thus, a portfolio containing \$100 million of outstanding debt owed by the individual debtors would be referred to as a "\$100 million" portfolio. Typically, debt portfolios are sold for a fraction of the face value. Thus, a \$100 million portfolio might be acquired for a few million dollars. The price could depend on numerous factors, including the issuer, type of debt, age of the accounts, whether the debt is secured, or the location of the debtors. Debt portfolios are often documented in electronic spreadsheets or database files containing thousands of entries with relevant information for each individual debt, including, for example, the identity of debtor and contact information, the type of debt, the amount owed, and the date the debt was acquired. Merrill and Ledford, and certain MLJ entities, attempted to enhance the value of their acquired portfolios by using a variety of collections practices to attempt to collect the underlying debts.

25. Starting by 2013, Merrill and Ledford began to offer and sell to investors purported investments in consumer debt portfolios, and were joined in their business by Jeziarski. These investments were structured in various ways, including but not limited to: (1) "Investor Agreements," mainly sold to individual investors; (2) "Agreements Concerning Acquisition of Portfolios," or similarly structured agreements; (3) investments structured as

credit facilities or promissory notes; and (4) unit interests in limited liability companies. But, during this time, from 2013 to 2018, the MLJ Group actually purchased and serviced only a limited amount of actual consumer debt, and the securities that they sold were backed by few, if any, actual assets or collateral.

26. On or about February 24, 2016, CPL2 was formed by Day.

27. On February 26, 2016, CPL2 entered into a “Business Loan and Security Agreement” (the “BLSA”) with GCR, Delmarva and Platinum (the “MLJ Borrowers”). The substance of the agreement was that CPL2 would serve as “Administrative Agent” for future investors who would ostensibly lend money to the MLJ Borrowers, which loans would be memorialized by promissory notes. The BLSA recited that the proceeds of these loans would be used to acquire credit card debt portfolios. The BLSA provided for a 2% annual fee to be paid by investors to CPL2 for its “services” as “Administrative Agent.” Investors were also liable for any costs and expenses, including attorney and expert fees, incurred by CPL2 as “Administrative Agent.” The BLSA granted investors a security interest in all of the assets of the MLJ Borrowers.

28. By March 2016, the Defendants had begun soliciting investors to invest in securities offered by the MLJ Group, in the form of promissory notes. The Defendants began, at that time, and continued well into 2018, to sell notes issued by the MLJ Group. In March 2016, the Defendants transmitted the first funds invested through their auspices to the MLJ Group. Between March 2016 and at least June 2018, the Defendants solicited and procured additional investments by new investors, and by existing investors.

29. The Defendants later transmitted copies of the BLSA to prospective investors, including to Plaintiffs Connaughton, Katz and Oser. Section 1.2 of the BLSA provides that “The Loans shall be used only to finance the Borrowers’ purchase of Credit Card Debt Portfolios,” and that “Each Borrower agrees that the Loan proceeds shall not be used for any other purpose without the Administrative Agent’s prior written consent.” These statements were false. The

vast majority of the proceeds were used, at all times, to finance the MLJ Group's personal spending and lavish lifestyles, and were not used to "finance...Credit Card Debt Portfolios." The Defendants knew that these statements were false and misleading, or, alternatively, in exercise of reasonable care should have known that they were false and misleading.

30. One potential investor solicited by the Defendants was Joel Heiserman, an accountant in Bethesda, Maryland, who was May's accountant, and who later came to lend funds to the MLJ Borrowers through CPL2 and Acrebay. The Defendants also encouraged Heiserman to recommend the investment, and pass the information on to, his accounting clients and business associates. Heiserman told the Defendants that he would relate the information provided to him by the Defendants to clients and business associates. The Defendants knew, expected, and desired, that the information they provided to Heiserman would be transmitted by Heiserman to other prospective investors. Defendants provided Heiserman, and other prospective new investors, with the BLSA. Defendants also had telephone and/or live conversations with Heiserman, in which they described the prospective investment, including the fact that the notes executed by the MLJ Borrowers would be collateralized by consumer debt portfolios. That representation was false, as the notes were not collateralized by any meaningful quantity of consumer debt, as Merrill and Ledford were operating a Ponzi scheme, and the bulk of the proceeds from the notes were used to finance Merrill's and Ledford's lavish lifestyle. Defendants knew their representations about the business of CPL2 and the MLJ Group were false and misleading, or, alternatively, in exercise of reasonable care should have known that they were false and misleading.

31. Heiserman recommended participation in the investment to certain clients and associate, including Plaintiff Oser.

32. Starting in or around July 2016, the Defendants began soliciting Plaintiff Oser's prospective investment in CPL2 and certain of the MLJ Entities. During that time period, the Defendants transmitted to Plaintiff Oser, among other things, the BLSA.

33. In late July or early August 2016, Plaintiff Oser had a telephone conversation with Defendant Day. Defendant Day discussed the prospective investment with Plaintiff Oser. Defendant Day indicated that he (Day) and Defendant May would be actively managing a consumer debt portfolio that was being acquired by Acrebay and/or CPL2. Day and May made substantially the same misrepresentation to all members of the Class, at times by email, at times by phone, or both. This representation was false. The Defendants were acting as mere conduits for the MLJ Group, a fact that was not disclosed to their investors. They did not have a business model or investment strategy of their own, and were a mere “feeder fund” designed to find investors for the MLJ Group. Defendants knew their representations about the business of CPL2 and the MLJ Group were false and misleading, or, alternatively, in exercise of reasonable care should have known that they were false and misleading.

34. On or about August 11, 2016, in reliance on representations made to him by the Defendants, Plaintiff Oser loaned \$50,000 to the MLJ Borrowers pursuant to a “Revolving Promissory Note.”

35. After having invested in the MLJ Group, Plaintiff Oser began receiving the periodic “Investor Updates,” typically circulated by Defendant Day (later by Defendant May) every 30-60 days. In the “Investor Updates,” Defendants regularly made false and misleading statements (some but not all of which are quoted/described herein) concerning (1) the progress of the investments, which were invariably represented to be successful and producing better-than-expected results, and (2) the purported investment strategies employed by the Defendants in purportedly selecting and managing specific investments. Defendants knew their representations about the business of CPL2 and the MLJ Group were false and misleading, or, alternatively, in exercise of reasonable care should have known that they were false and misleading. Defendants knew that their representations concerning their purported investment strategies were false and misleading, as they were acting as mere conduits for the MLJ Group.